

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES ANDREW COBB JR.,

Plaintiff,

-against-

CITY OF PEEKSKILL and FABIAN GONZALEZ,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 4/8/2022

No. 20-CV-991 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff James Andrew Cobb Jr., proceeding *pro se*, commenced this action on February 5, 2020. (ECF No. 2.) On August 23, 2021, the Court received a letter from a nonparty resident at Plaintiff's address listed on ECF, notifying the Court that Plaintiff died on February 10, 2021. (ECF No. 28.) On October 7, 2021, the Court requested for Kadian Downer to send a letter to the Court by November 10, 2021 and inform the Court as to whether she understands the Plaintiff is deceased, whether she was Plaintiff's wife prior to his passing, and whether Plaintiff's estate intends to seek to substitute Plaintiff in this action. (ECF No. 32.) On November 8, 2021, Defendants advised the Court they have not received communications from Plaintiff's estate or Kadian Downer, or from anyone else, seeking to substitute Plaintiff in this action. (ECF No. 34.) This Court directed defense counsel to file an affidavit by January 21, 2022 as to whether counsel has heard from Plaintiff's estate and directed Defendants to mail another copy of the Court's October 7, 2021 memorandum endorsement along with a copy of counsel's affidavit to Kadian Downer. (ECF No. 35.) On January 21, 2022, defense counsel filed an affidavit stating that he has not heard from Plaintiff's estate. (ECF No. 36.) Defendants filed a letter motion dated April

6, 2022 seeking to file a motion to dismiss the action pursuant to Federal Rule of Civil Procedure 25(a)(1). (ECF No. 38.)

Rule 25(a)(1) provides, in pertinent part, that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the defendant must be dismissed.

Fed. R. Civ. P. 25(a)(1). To date, the Court has not received communications from Plaintiff's estate or from Kadian Downer. In light of the foregoing, this Court dismisses Plaintiff's action without prejudice.

The Clerk of Court is respectfully directed to terminate the motion at ECF No. 38 and to close the case. The Clerk of Court is directed to mail a copy of this Order to *pro se* Plaintiff at his address listed on ECF and to Kadian Downer at 63 Hartley Avenue, Mount Vernon, NY 10550, and to show service on the docket.

Dated: April 8, 2022
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge